



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Millipore Corporation

File: B-234979

Date: July 11, 1989

DIGEST

1. Insertion of product model number does not render bid nonresponsive where bid contains express statement that the specified equipment conforms to the specifications.
2. While unsolicited commercial literature submitted with bid described petri dishes as packaged in trays of 100 per package which was contrary to solicitation packaging requirements, cover letter submitted with the bid reasonably explained that literature concerned only dishes furnished in prior procurements. Therefore, descriptive literature did not express an intent to qualify bid.

DECISION

Millipore Corporation protests the award of a contract to Columbia Diagnostics, Inc., and the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DLA120-89-B-0104, issued by the Defense Personnel Support Center, Philadelphia, Pennsylvania. The agency interpreted a cover letter (containing a model number) and unsolicited descriptive literature that the protester submitted with its low bid as creating uncertainty as to Millipore's intent to comply with requirements of the IFB and, for that reason, rejected Millipore's bid as nonresponsive. Millipore denies taking exception to any material requirements of the IFB.

We sustain the protest.

The agency issued the IFB on November 23, 1988, for the supply of 1,209 packages of 500 disposable petri dishes, identified as national stock number (NSN) 6640-01-030-9012, for use with water testing kits used for bacteriologic analysis of water in the field. Each package of 500 dishes was to contain 25 sealed sterile containers of 20 dishes each.

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The agency received four bids on December 23. The protester submitted the low bid with a cover letter specifying that it would supply a product identified by its own commercial model number. The letter stated that the proposed petri dishes met all technical requirements of the IFB and that the protester had previously provided the identical dishes in packages of 100 under a second NSN (6640-00-130-2637). Millipore also enclosed a page from its commercial catalog which described the dishes under a separate commercial catalog number (a number different from its commercial model number) as packaged in sealed sterile trays of 100 per package. The second NSN (identified in Millipore's cover letter) referenced this commercial catalog number.

The contracting officer states that he was uncertain whether the product identified by model number contained in Millipore's cover letter met the IFB requirements. Further, the contracting officer states that he was uncertain whether the product Millipore was offering met the IFB's packaging requirements since the unsolicited descriptive literature described dishes that did not conform to packaging requirements. He therefore rejected Millipore's bid. Award was made to Columbia on March 21, 1989. The agency has suspended performance of the contract pending our decision.

The protester argues that it had no intention of qualifying its bid, and that the information supplied was intended merely to establish that it was a technically qualified previous supplier of petri dishes to the government.

While the insertion of unsolicited model numbers in a bid may create an ambiguity, see 50 Comp. Gen. 8 (1970); J. S. Staedtler Inc., B-188459, June 1, 1977, 77-1 CPD ¶ 379, such a bid need not be rejected as ambiguous where the bid contains an express statement that the specified product conforms to the specifications. Wright Tool Co., B-212343, Oct. 12, 1983, 83-2 CPD ¶ 457; Sentinel Electronics, Inc., B-185681, June 24, 1976, 76-1 CPD ¶ 405. Here, since the bid contained an express statement by Millipore that the product identified by its model number conformed to the technical requirements, there was no ambiguity, in our view, in Millipore's bid arising from its insertion of a model number. Rather, by its express terms, Millipore's bid offered a conforming product and the model number can only be reasonably viewed as having been furnished for informational purposes only.

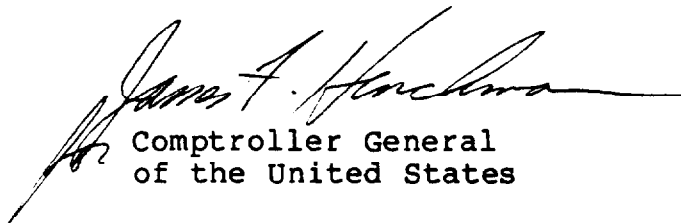
As for the unsolicited descriptive literature, Federal Acquisition Regulation §§ 14.202-5(f) and 14.202-4(g) (FAC 84-11), provides that unsolicited descriptive literature

generally may be disregarded unless it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid. We find no intention to qualify the bid in this case.

While Millipore's commercial literature described dishes packaged in trays of 100 per package, its cover letter explained that this packaging concerned prior procurements. Millipore's cover letter in two places indicates its intent to be bound to the IFB's terms and conditions, and there was no indication that the required packaging could not easily be furnished by the firm. Thus, it was clear from the cover letter that the literature was submitted for informational purposes only. Consistent with the FAR, the contracting officer should have disregarded Millipore's unsolicited descriptive literature in determining whether Millipore intended to provide packaging in accordance with the IFB specification.

The protest is sustained.

We recommend that the contract awarded to Columbia be terminated for the convenience of the government and award be made to Millipore, if otherwise proper. We are so advising the Director of the Defense Logistics Agency by letter of today. We also find that Millipore is entitled to be reimbursed its protest costs. 4 C.F.R. § 21.6(d)(1) (1988).



James F. Hinchman
Comptroller General
of the United States